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OFFICE OF PETITIONS

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In re Patent No. 7,704,737 : DECISION ON REQUEST FOR
Weiss et al. : RECONSIDERATION OF
Issue Date: April 27, 2010 : PATENT TERM ADJUSTMENT AND
Application No. 10/523,253 : NOTICE OF INTENT TO ISSUE
Filed: January 26, 2005 : CERTIFICATE OF CORRECTION
Attorney Docket No. 10021-021US1

This is a decision on the petition filed on June 22, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by five hundred and sixty-four (564) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED**. The term of the above-identified patent is extended or adjusted by **four hundred and fifteen (415) days**.

It is noted that patentees failed to account for the filing of the notice of appeal on April 15, 2008. The Office reminds patentees that the period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). In this instance, the period consumed by appellate review is 18 days, beginning on the date on which the notice of appeal to the Board of Patent Appeals and Interferences was filed, April 15, 2008, and ending on the date the Office action under 35 U.S.C. 132 was filed, May 2, 2008. Thus, the B delay is 592 days (610 - 18).

No consideration will be given to patentee's arguments of additional adjustments for matters that occurred prior to the mailing of the notice of allowance. Further to this point, PALM records indicate that the issue fee payment was received in the

Office on February 2, 2010. No application for patent term adjustment preceded the payment of the issue fee. The period for filing an application for patent term adjustment requesting reconsideration of the initial determination of patent term adjustment at the time of mailing of the notice of allowance ended February 2, 2010. Accordingly, relative to patentee's assertions of adjustments to the patent term entered prior to the mailing of the Notice of Allowance, it is appropriate to dismiss these arguments as untimely filed under § 1.705(b).

Accordingly, the patent term adjustment is 415 days (350 days of A delay + 592 days of B delay - 131 days of overlap - 396 days of applicant delay).

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The Office acknowledges the submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fee is due.

This matter is being referred to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **four hundred and fifteen (415) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,704,737 B2

DATED : June 22, 2010

INVENTOR(S) : Weiss

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (416) days

Delete the phrase "by 416 days" and insert – by 415 days--